

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division

| | | |
|------------------------|---|---------------------------|
| TERRY A. RIGGLEMAN, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 5:17cv63 |
| |) | |
| HAROLD CLARKE, ET AL., |) | |
| |) | |
| Defendants. |) | |

STATUS REPORT

COME NOW, Defendants Harold Clarke and Mark Amonette, M.D., pursuant to the Court's Order dated June 23, 2022 (ECF 204), and provides the following status report:

In light of the holding of the Fourth Circuit Court of Appeals in *Pfaller v. Amonette*, No. 21-1555, specifically that Dr. Amonette was not on adequate notice that he was violating a clearly established right because the case law was not sufficient to give fair warning that his system wide treatment guidelines for a new drug were constitutionally deficient, Defendants respectfully ask the Court to apply the reasoning and holdings of the *Pfaller v. Amonette* case, as well as the arguments stated in Defendants' previously filed Brief in Opposition to Court's Intent to Vacate Prior Grant of Qualified Immunity (ECF 190), and uphold the grant of qualified immunity to Defendants Clarke and Amonette.¹ Further, Defendants request that the Court rule

¹ At this time, Defendants' do not believe additional supplemental briefing is require based on the pending Brief in Opposition to Court's Intent to Vacate Prior Grant of Qualified Immunity; however, should Plaintiff advise the court that he wishes to file a supplemental brief or the Court believes additional briefing is necessary, Defendants reserve the right to provide a supplemental brief.

on the Plaintiff's previously filed Motion to Dismiss and dismiss the case against Defendants Clarke and Amonette.

As directed by the Court in its Order, counsel for Defendants contacted Plaintiff's counsel multiple times to ascertain Plaintiff's position but received no response.

RESPECTFULLY SUBMITTED,

HAROLD CLARKE

MARK AMONETTE, M.D.

/s/ Elizabeth M. Muldowney

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will then send a notification of such filing (NEF) to the following:

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